

AMENDED IN SENATE JUNE 19, 2012

AMENDED IN SENATE MAY 31, 2012

AMENDED IN ASSEMBLY MARCH 22, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 178**

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**Introduced by Assembly Members Gorell and Ma**

January 24, 2011

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An act to amend ~~Section~~ *Sections 24204, 24208, and 24214* of the Education Code, relating to state teachers' retirement, *and declaring the urgency thereof, to take effect immediately.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 178, as amended, Gorell. State teachers' retirement.

The Teachers' Retirement Law limits the amount of postretirement compensation that may be earned in specified types of employment by a retired member of the Defined Benefit Program without a reduction in the retirement benefits of the member. That law provides exemptions from this limit and until June 30, 2012, specifies that the limitation provisions do not apply to compensation earned by a member retired for service who has returned to work after retirement and, for at least 12 consecutive months, has not performed specified activities.

This bill would extend the operation of that exemption until June 30, 2013. The bill also would exempt from the earnings limitation, until June 30, 2013, compensation paid to a retired member who has returned to work after the date of retirement as a trustee, administrator, or fiscal adviser—~~appointed~~ *approved* pursuant to specified provisions by the Superintendent of Public Instruction, the Board of Governors of the *California* Community Colleges, or a county superintendent of schools

to address academic or financial weaknesses in a school district. *The bill would specify the documentation required for any of those persons exercising that compensation exemption. The bill would additionally exempt from the earnings limitation an employee of a 3rd party which does not participate in a California public pension system if the activities performed by the person are not normally performed by employees of a public employer and it is for a limited-term assignment.*

*The Teachers' Retirement Law limits the amount of compensation for certain creditable service activities by a retired member in one school year to be \$22,000 adjusted by the percentage change in the average compensation earnable by active members of the Defined Benefit Program, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.*

*The bill would change that limit to be  $\frac{1}{2}$  of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year.*

*Existing law authorizes a retired member of the State Teachers' Retirement System (STRS) to terminate his or her retirement allowance, reinstate as an active member, and later cancel the termination upon subsequently retiring, as specified. Existing law prescribes the conditions under which a STRS service retirement allowance becomes effective and requires, in this regard, that the effective date be at least one year following the date on which it is terminated pursuant to the above-described provision.*

*This bill would eliminate the one-year waiting period after the termination. The bill would also prohibit a member who terminates his or her retirement allowance pursuant to that provision and retires within one year of reinstatement from electing a different option or different set of beneficiaries than were in effect at the time of the termination.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 24204 of the Education Code is amended  
2     to read:

1     24204. (a) A service retirement allowance under this part shall  
2 become effective upon any date designated by the member,  
3 provided all of the following conditions are met:

4     (1) An application for service retirement allowance is filed on  
5 a form provided by the system, which is executed no earlier than  
6 six months before the effective date of retirement allowance.

7     (2) The effective date is later than the last day of creditable  
8 service for which compensation is payable to the member.

9     (3) The effective date is no earlier than ~~one year following the~~  
10 date on which the retirement allowance was terminated under  
11 Section 24208, ~~or subdivision (a) of Section 24117.~~

12     (4) *The effective date is no earlier than one year following the*  
13 *date on which the retirement allowance was terminated under*  
14 *subdivision (a) of Section 24117.*

15     ~~(4)~~

16     (5) The effective date is no earlier than the date upon and  
17 continuously after which the member is determined to the  
18 satisfaction of the board to have been mentally incompetent.

19     ~~(5)~~

20     (6) The effective date is no earlier than the date upon which the  
21 member completes payment of a service credit purchase pursuant  
22 to Section 22801, 22820, or 22826, or payment of a redeposit of  
23 contributions pursuant to Section 23200, except as provided in  
24 Section 22801 or 22829.

25     ~~(6)~~

26     (7) The effective date is no earlier than the first day of the month  
27 in which the application for disability benefits is received at the  
28 system's headquarters office, as established pursuant to Section  
29 22375, if the application is made pursuant to Section 24201.5.

30     (b) A member who files an application for service retirement  
31 may change or cancel his or her retirement application, as long as  
32 the form provided by the system is received in the system's  
33 headquarters office, established pursuant to Section 22375, no later  
34 than 30 days from the date the member's initial benefit payment  
35 for the member's most recent retirement under the Defined Benefit  
36 Program is paid by the system.

37     (c) The retirement date of a member retiring on and after January  
38 1, 2012, shall be no earlier than January 1, 2012.

39     *SEC. 2. Section 24208 of the Education Code is amended to*  
40 *read:*

1     24208. (a) A member retired for service under this part may  
2     terminate the retirement allowance *payable under this part and*  
3     *applicable to his or her credited service* upon written request to  
4     the system effective upon a date designated by the member, subject  
5     to the following conditions:

6     (1) The request for termination of the retirement allowance is  
7     filed on a form provided by the system, and the form is executed  
8     no earlier than six months before the effective date of the  
9     termination.

10    (2) The effective date of the termination of the retirement  
11    allowance is no earlier than the first day of the month in which the  
12    request for termination is received in the system's headquarters  
13    office, as established pursuant to Section 22375.

14    (b) A member who files a request for termination of the  
15    retirement allowance may cancel the termination upon written  
16    request to the system, provided that the cancellation request is  
17    received in the system's headquarters office, as established pursuant  
18    to Section 22375, no later than the last day of the month in which  
19    the termination is effective.

20    (c) *A member whose retirement allowance is terminated*  
21    *pursuant to this section may apply for retirement pursuant to*  
22    *Section 24209, in accordance with Section 24204.*

23    (d) *A member whose retirement allowance is terminated*  
24    *pursuant to this section may not file a preretirement election of*  
25    *an option pursuant to Section 24307 within one year of*  
26    *reinstatement that elects either a different option or a different*  
27    *beneficiary or set of beneficiaries, or both, than were in effect at*  
28    *the time the retirement allowance was terminated.*

29    (e) *A member whose retirement allowance is terminated*  
30    *pursuant to this section and retires pursuant to Section 24209*  
31    *within one year of reinstatement shall elect the same option and*  
32    *beneficiary or beneficiaries that were in effect at the time the*  
33    *retirement allowance was terminated.*

34    ~~SECTION 4.~~

35    ~~SEC. 3.~~ Section 24214 of the Education Code, as amended by  
36    Section 25 of Chapter 703 of the Statutes of 2011, is amended to  
37    read:

38    24214. (a) A member retired for service under this part may  
39    perform the activities identified in subdivision (a) or (b) of Section  
40    22119.5, or subdivision (a) or (b) of Section 26113, as an employee

1 of an employer, as an employee of a third party, or as an  
2 independent contractor within the California public school system,  
3 but the member shall not make contributions to the retirement fund  
4 or accrue service credit based on compensation earned from that  
5 service. The employer shall maintain accurate records of the  
6 earnings of the retired member and report those earnings monthly  
7 to the system and retired member as described in Section 22461.

8 (b) If a member is retired for service under this part, the rate of  
9 pay for service performed by that member as an employee of the  
10 employer, as an employee of a third party, or as an independent  
11 contractor shall not be less than the minimum, nor exceed that paid  
12 by the employer to other employees performing comparable duties.

13 (c) A member retired for service under this part shall not be  
14 required to reinstate for performing the activities identified in  
15 subdivision (a) or (b) of Section 22119.5 as an employee of an  
16 employer, as an employee of a third party, or as an independent  
17 contractor within the California public school system.

18 (d) A member retired for service under this part may earn  
19 compensation for performing activities identified in subdivision  
20 (a) or (b) of Section 22119.5 in any one school year up to the  
21 limitation specified in subdivision (f) as an employee of an  
22 employer, as an employee of a third party, or as an independent  
23 contractor, within the California public school system, without a  
24 reduction in his or her retirement allowance.

25 ~~(e) (1) The postretirement compensation limitation provisions~~  
26 ~~set forth in this section are not applicable to compensation earned~~  
27 ~~by a member retired for service under this part who has returned~~  
28 ~~to work after the date of retirement and, for a period of at least 12~~  
29 ~~consecutive months, has not performed the activities identified in~~  
30 ~~subdivision (a) or (b) of Section 22119.5 as an employee of an~~  
31 ~~employer, as an employee of a third party, or as an independent~~  
32 ~~contractor within the California public school system. For the~~  
33 ~~purpose of this paragraph, the period of 12 consecutive months~~  
34 ~~shall begin no earlier than the effective date of the member's most~~  
35 ~~recent retirement.~~

36 ~~(2)~~

37 (e) The postretirement compensation limitation provisions set  
38 forth in this section are not applicable to compensation earned for  
39 the performance of the activities described in subdivision (a) for  
40 which the employer is not eligible to receive state apportionment

1 or to compensation that is not creditable pursuant to Section  
2 22119.2.

3 (f) The limitation that shall apply to the compensation for  
4 performance of the activities identified in subdivision (a) or (b) of  
5 Section 22119.5 by a member retired for service under this part  
6 either as an employee of an employer, an employee of a third party,  
7 or as an independent contractor shall, in any one school year, be  
8 an amount calculated by the board each July 1 equal to ~~twenty-two~~  
9 ~~thousand dollars (\$22,000) adjusted by the percentage change in~~  
10 ~~the average compensation earnable of active members of the~~  
11 ~~Defined Benefit Program, as determined by the system, from the~~  
12 ~~1998-99 one-half of the median final compensation of all members~~  
13 ~~who retired for service during the fiscal year to the fiscal year~~  
14 ~~ending in the previous calendar year.~~

15 (g) If a member retired for service under this part earns  
16 compensation for performing activities identified in subdivision  
17 (a) or (b) of Section 22119.5 in excess of the limitation specified  
18 in subdivision (f), as an employee of an employer, as an employee  
19 of a third party, or as an independent contractor, within the  
20 California public school system, and if that compensation is not  
21 exempt from that limitation under subdivision (e) or any other  
22 provisions of law, the member's retirement allowance shall be  
23 reduced by the amount of the excess compensation. The amount  
24 of the reduction may be equal to the monthly allowance payable  
25 but shall not exceed the amount of the annual allowance payable  
26 under this part for the fiscal year in which the excess compensation  
27 was earned *after any reduction made in accordance with*  
28 *subdivision (b) of Section 24214.5.*

29 (h) The limitation specified in this section is not applicable to  
30 compensation paid to a member retired for service under this part  
31 who has returned to work after the date of retirement as a trustee,  
32 administrator, or fiscal adviser ~~appointed~~ *approved* by the  
33 Superintendent of Public Instruction, the Board of Governors of  
34 the *California* Community Colleges, or a county superintendent  
35 of schools to address academic or financial weaknesses in a school  
36 district pursuant to any of the following provisions:

37 (1) Section 41320.1.

38 (2) Article 2 (commencing with Section 42122) of Chapter 6  
39 of Part 24 of Division 3 of Title 2.

1 (3) Article 3.1 (commencing with Section 52055.57) of Chapter  
2 6.1 of Part 28 of Division 4 of Title 2.

3 (4) Section 84040.

4 (i) The Superintendent of Public Instruction, the Chancellor of  
5 the *California* Community Colleges, or the county superintendent  
6 of schools exercising the exemption pursuant to subdivision (h)  
7 shall submit all documentation required by the system to  
8 substantiate the eligibility of the retired member for the exemption,  
9 including compliance with subdivision (h). The documentation  
10 shall be received by the system prior to the retired member's  
11 performance of any activity specified in subdivision (a) or (b) of  
12 Section 22119.5 or subdivision (a) or (b) of Section 26113.

13 (j) *The documentation required for subdivision (i) shall include*  
14 *certification of the following:*

15 (1) *The position was first advertised for appointment to current*  
16 *active or inactive members of the program with the necessary*  
17 *qualifications to perform the requirements of the position and no*  
18 *qualified current active or inactive member was available to be*  
19 *appointed.*

20 (2) *The appointing authority made a good faith effort to hire a*  
21 *retired member who reinstated to active membership for the*  
22 *position at the same salary that was offered as first advertised*  
23 *pursuant to paragraph (1).*

24 (3) *The appointing authority, having tried and failed to hire a*  
25 *current active or inactive member or a reinstated retired member,*  
26 *hired a retired member and the salary offered to the retired*  
27 *member subject to this paragraph does not exceed the salary that*  
28 *was offered as first advertised pursuant to paragraph (1).*

29 (4) *The appointment shall be terminated no later than June 30,*  
30 *2013.*

31 (5) *The salary paid shall be no greater than the salary offered*  
32 *to current active members for the appointed position.*

33 (k) *An employee of a third party shall not be subject to this*  
34 *section if he or she meets all of the following conditions:*

35 (1) *He or she performs a limited-term assignment.*

36 (2) *The third-party employer does not participate in a California*  
37 *public pension system.*

38 (3) *The activities performed by the individual are not normally*  
39 *performed by employees of the employer, as defined in Section*  
40 *22131.*

1     ~~(j)~~

2     ~~(l)~~ The amendments to this section enacted during the 1995–96  
3 Regular Session shall be deemed to have become operative on July  
4 1, 1996.

5     ~~(k)~~

6     ~~(m)~~ *This section shall apply to compensation paid during the*  
7 *2012–13 fiscal year.*

8     ~~(n)~~ This section shall become inoperative on June 30, 2013,  
9 and, as of January 1, 2014, is repealed, unless a later enacted  
10 statute, that becomes operative on or before January 1, 2014,  
11 deletes or extends the dates on which it becomes inoperative and  
12 is repealed.

13     ~~SEC. 2.~~

14     ~~SEC. 4.~~ Section 24214 of the Education Code, as amended by  
15 Section 26 of Chapter 703 of the Statutes of 2011, is amended to  
16 read:

17     24214. (a) A member retired for service under this part may  
18 perform the activities identified in subdivision (a) or (b) of Section  
19 22119.5, or subdivision (a) or (b) of Section 26113, as an employee  
20 of an employer, as an employee of a third party, or as an  
21 independent contractor within the California public school system,  
22 but the member shall not make contributions to the retirement fund  
23 or accrue service credit based on compensation earned from that  
24 service. The employer shall maintain accurate records of the  
25 earnings of the retired member and report those earnings monthly  
26 to the system and retired member as described in Section 22461.

27     (b) If a member is retired for service under this part, the rate of  
28 pay for service performed by that member as an employee of the  
29 employer, as an employee of a third party, or as an independent  
30 contractor within the California public school system shall not be  
31 less than the minimum, nor exceed that paid by the employer to  
32 other employees performing comparable duties.

33     (c) A member retired for service under this part shall not be  
34 required to reinstate for performing the activities identified in  
35 subdivision (a) or (b) of Section 22119.5 as an employee of an  
36 employer, as an employee of a third party, or as an independent  
37 contractor within the California public school system.

38     (d) A member retired for service under this part may earn  
39 compensation for performing activities identified in subdivision  
40 (a) or (b) of Section 22119.5 in any one school year up to the



1 limitation specified in subdivision (f) as an employee of an  
2 employer, as an employee of a third party, or *as* an independent  
3 contractor, within the California public school system, without a  
4 reduction in his or her retirement allowance.

5 (e) The postretirement compensation limitation provisions set  
6 forth in this section are not applicable to compensation earned for  
7 the performance of the activities described in subdivision (a) for  
8 which the employer is not eligible to receive state apportionment  
9 or to compensation that is not creditable pursuant to Section  
10 22119.2.

11 (f) The limitation that shall apply to the compensation for  
12 performance of the activities identified in subdivision (a) or (b) of  
13 Section 22119.5 by a member retired for service under this part  
14 either as an employee of an employer, an employee of a third party,  
15 or as an independent contractor shall, in any one school year, be  
16 an amount calculated by the board each July 1 equal to ~~twenty-two~~  
17 ~~thousand dollars (\$22,000) adjusted by the percentage change in~~  
18 ~~the average compensation earnable of active members of the~~  
19 ~~Defined Benefit Program, as determined by the system, from the~~  
20 ~~1998-99 fiscal year to~~ *one-half of the median final compensation*  
21 *of all members who retired for service during the fiscal year ending*  
22 *in the previous calendar year.*

23 (g) If a member retired for service under this part earns  
24 compensation for performing activities identified in subdivision  
25 (a) or (b) of Section 22119.5 in excess of the limitation specified  
26 in subdivision (f), as an employee of an employer, as an employee  
27 of a third party, or as an independent contractor, within the  
28 California public school system, the member's retirement  
29 allowance shall be reduced by the amount of the excess  
30 compensation. The amount of the reduction may be equal to the  
31 monthly allowance payable but may not exceed the amount of the  
32 annual allowance payable under this part for the fiscal year in  
33 which the excess compensation was earned *after any reduction*  
34 *made in accordance with subdivision (b) of Section 24214.5.*

35 (h) *An employee of a third party shall not be subject to this*  
36 *section if he or she meets all of the following conditions:*

37 (1) *He or she performs a limited-term assignment.*

38 (2) *The third-party employer does not participate in a California*  
39 *public pension system.*

1     (3) *The activities performed by the individual are not normally*  
2 *performed by employees of the employer, as defined in Section*  
3 *22131.*

4     .

5     ~~(h)~~

6     (i) The language of this section derived from the amendments  
7 to the section of this number added by Chapter 394 of the Statutes  
8 of 1995, enacted during the 1995–96 Regular Session, is deemed  
9 to have become operative on July 1, 1996.

10    ~~(i)~~

11    (j) This section shall become operative on July 1, 2013.

12    SEC. 5. *This act is an urgency statute necessary for the*  
13 *immediate preservation of the public peace, health, or safety within*  
14 *the meaning of Article IV of the Constitution and shall go into*  
15 *immediate effect. The facts constituting the necessity are:*

16    *In order to ensure that school districts and community colleges*  
17 *across the state are not left unable to retain their interim educators,*  
18 *who are often in important educational and administrative roles,*  
19 *due to the June 30, 2012, expiration of certain exemptions from*  
20 *the limitations on postretirement employment by members of the*  
21 *Defined Benefit Program, it is necessary that this act take effect*  
22 *immediately.*